

Message Text

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TO AMEMBASSY CAIRO PRIORITY

S E C R E T STATE 160387

EXDIS

FOLLOWING REPEAT STATE 160387 SENT ACTION CARACAS INFO TEL AVIV
DATED 24 JULY 1974:

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S E C R E T STATE 160387

EXDIS

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS: NOTE FROM EMBASSY OF ISRAEL REGARDING STRAITS

FOR US DEL LOS

FOLLOWING IS TEXT GIVEN TO US BY ISRAELI EMBASSY, MINISTER
SHALEV, LATE ON JULY 23:

1. THE AMBASSADOR OF ISRAEL PRESENTS HIS COMPLIMENTS TO
THE HONORABLE THE SECRETARY OF STATE AND WITH REFERENCE TO
THE LAW OF THE SEA CONFERENCE PRESENTLY TAKING PLACE AT
CARACAS, HAS THE HONOR TO REQUEST THAT THE UNITED STATES
CONTINUE TO SUPPORT FREEDOM OF PASSAGE THROUGH STRAITS USED

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FOR INTERNATIONAL NAVIGATION, WITHOUT DIFFERENTIATING

BETWEEN THE STRAITS OF TIRAN AND ANY OTHER STRAITS;

2. THE QUESTION OF PASSAGE THROUGH INTERNATIONAL STRAITS IS ONE OF THE ISSUES BEING DELIBERATED AT THE PRESENT CONFERENCE OF THE LAW OF THE SEA.

3. THE U.S. SUBMITTED TO SUB-COMMITTEE II OF THE COMMITTEE ON THE PEACEFUL USE OF THE SEABED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION IN 1971 (G.A.; XXVI SESS. SUPP. NO. 21 (A/8421) P. 241) DRAFT ARTICLES ON THE BREADTH OF THE TERRITORIAL SEA, STRAITS AND FISHERIES.

4. ARTICLE 2 OF THE DRAFT PROPOSED A REGIME OF "FREEDOM OF NAVIGATION AND OVERFLIGHT FOR THE PURPOSE OF TRANSIT" IN STRAITS USED FOR INTERNATIONAL NAVIGATION BETWEEN ONE PART OF THE HIGH SEAS AND ANOTHER PART OF THE HIGH SEAS OR THE TERRITORIAL SEA OF A FOREIGN STATE" (EMPHASIS ADDED)

5. THIS DEFINITION OF STRAITS IS IDENTICAL TO THAT USED IN ARTICLE 16(4) OF THE 1958 GENEVA CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE.

6. THE U.S.S.R. (A/AC. 138/SC. II/L.7) AND SUBSEQUENTLY THE U.K. AT THE PRESENT CONFERENCE (A/CONF.62/C.2/L HAVE HOWEVER, PROPOSED THAT DIFFERENTIATION BE MADE BETWEEN STRAITS CONNECTING TWO PARTS OF THE HIGH SEAS AND STRAITS LINKING ONE PART OF THE HIGH SEA AND THE TERRITORIAL SEA OF A FOREIGN STATE. THE U.K. REPRESENTATIVE AT THE SECOND COMMITTEE OF THE CONFERENCE DECLARED ON 11 JULY 1974:

"WITH REGARD TO STRAITS USED FOR INTERNATIONAL NAVIGATION BETWEEN ONE PART OF THE HIGH SEAS AND THE TERRITORIAL SEA OF A FOREIGN STATE, THE INTEREST OF THE INTERNATIONAL COMMUNITY IN FREE NAVIGATION IS NOT SO STRONG AS IN THE CASE OF STRAITS LINKING TWO PARTS OF THE HIGH SEAS, THIS DIFFERENCE IS RECOGNIZED BY ARTICLE 8 OF OUR PROPOSALS."

7. THE STRAITS OF TIRAN ARE ONE OF THE VERY FEW STRAITS IN THE WORLD USED FOR INTERNATIONAL NAVIGATION BETWEEN ONE PART OF THE HIGH SEAS AND THE TERRITORIAL SEA OF A
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FOREIGN STATE, AND THE ADOPTION OF U.S.S.R. AND U. K. PROPOSALS COULD WELL BE REGARDED AS CONFIRMATION BY THE INTERNATIONAL COMMUNITY THAT NAVIGATION THROUGH THE STRAITS OF TIRAN IS INDEED OF LESSER IMPORTANCE THAN THE PASSAGE THROUGH OTHER STRAITS.

8. IN PRACTICAL TERMS THE ADOPTION OF THE U.S.S.R. AND U.K. PROPOSAL WOULD DENY THE RIGHT OF OVERFLIGHT OF THE

STRAITS OF TIRAN AND SUBMIT ALL SHIPPING TO THE ABUSES WE HAVE EXPERIENCED OF THE DUTY OF THE COASTAL STATES TO ALLOW INNOCENT PASSAGE.

9. THE QUESTION OF PASSAGE OF WARSHIPS WOULD BE SETTLED FOR ALL STRAITS IN THE WORLD OTHER THAN STRAITS SUCH AS TIRAN.

10. THIS DIFFERENTIATION BETWEEN TIRAN AND OTHER STRAITS WOULD BE IN CONTRADICTION TO THE OFT-REPEATED REASSURANCES OF THE MARITIME POWERS AS TO THE FREEDOM OF NAVIGATION IN THE STRAITS OF TIRAN.

11. SUCH DIFFERENTIATION WOULD FURTHERMORE BE CONTRARY TO INTERNATIONAL LAW.

12. AT THE 1958 CONFERENCE THE REPRESENTATIVE OF THE NETHERLANDS STATED IN THIS RESPECT:

"FINALLY THE ADDITION OF THE WORDS 'OR THE TERRITORIAL WATERS OF A FOREIGN STATE' REFLECTED EXISTING USAGE SAFEGUARDING THE RIGHT TO USE STRAITS LINKING THE HIGH SEAS WITH THE TERRITORIAL SEA OF A STATE." (A/CONF. 13/39, P. 94, PARA 16).

AND WHEN THE REPRESENTATIVE OF THE U.A.R. REQUESTED A SEPARATE VOTE IN THIS QUESTION (ARTICLE 17 PARA 4) THE REPRESENTATIVE OF DENMARK OBJECTED STATING CATEGORICALLY:

MR. SORENSON

"...THE PRINCIPLE OF FREEDOM OF NAVIGATION WAS INDIVISIBLE, AND WHEN VESSELS CROSSED A PORTION OF THE HIGH SEAS ON
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THEIR WAY TO A PORT, IT WAS IRRELEVANT WHETHER OR NOT THEY HAD TO PASS THROUGH THE TERRITORIAL SEA OF ANOTHER STATE; THE EFFECT OF A SEPARATE VOTE WOULD BE TO DISCRIMINATE BETWEEN SHIPS PASSING THROUGH THE TERRITORIAL SEA OF A STATE OTHER THAN THEIR FLAG STATE ON THEIR WAY FROM ONE PART OF THE HIGH SEAS TO ANOTHER, AND SHIPS PASSING THROUGH THE SAME TERRITORIAL SEAS ON THEIR WAY FROM A PORTION OF THE HIGH SEAS TO THE TERRITORIAL SEA OF A THIRD STATE; THE COASTAL STATE WOULD BE UNDER AN EQUAL OBLIGATION TO RESPECT THE RIGHT OF INNOCENT PASSAGE IN BOTH CASES." (A/CONF. 13/36, P.65 PARA 5).

13. THE PROPOSAL OF THE U.A.R. WAS DEFEATED AND THE 1958 GENEVA CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE MAKES NO DISTINCTION WHATSOEVER BETWEEN DIFFERENT

TYPES OF STRAITS INSOFAR AS NAVIGATION IS INVOLVED.

14. FREEDOM OF NAVIGATION THROUGH THE STRAITS OF TIRAN IS VITAL TO ISRAEL, AND IS AN ESSENTIAL ELEMENT OF THE FREEDOM OF NAVIGATION THROUGH ALL INTERNATIONAL WATERWAYS A FREEDOM THAT HAS ALWAYS BEEN A CORNERSTONE OF U.S. FOREIGN POLICY.

15. ANY DIFFERENTIATION IN THIS RESPECT BETWEEN THE STRAITS OF TIRAN AND OTHER STRAITS WOULD BE A SERIOUS BLOW TO ISRAEL AND TO FREEDOM OF NAVIGATION IN GENERAL AND IT IS ISRAEL'S EARNEST REQUEST THAT THE UNITED STATES CONTINUE STRENUOUSLY TO OBJECT TO SUCH DIFFERENTIATION.

16. THE AMBASSADOR OF ISRAEL TAKES THIS OPPORTUNITY TO RENEW TO THE HONORABLE THE SECRETARY OF STATE THE ASSURANCES OF HIS HIGHEST CONSIDERATION.

WASHINGTON, D.C.

23 JULY 1974

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